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To: [John MacIsaac](#); [Greg Fleming](#); [Meade, Aidan](#)
Cc: [petejwhelan@lowerchurchillproject.ca](#); [lanceclarke@lowerchurchillproject.ca](#)
Subject: Valard Delays and Cost Claims
Date: Monday, March 20, 2017 6:07:39 PM
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Memo Re Valard Claims_draft.docx

Gentlemen,

Attached is a summary of the status of our work on Valard's delay, the schedule monitoring tool we have developed, and some observations on their cost claims.

Any questions or thoughts please don't hesitate to contact me.

Bruce Hallock

Bruce Hallock, PSP, CFCC

Disputes Avoidance Manager

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MEMO

TO: JOHN MACISSACS, GREG FLEMING
FROM: BRUC E. HALLOCK
SUBJECT: CT-0327-001 CONSTRUCTION OF 350KV HVDC TRANSMISSION LINE
DATE: 2019-05-04
CC: PETER WHELAN, AIDAN MEADE, LANCE CLARKE

Gentlemen:

As you are aware I have been working with our consultants Berkeley Research Group (“BRG”) for some time to build an as-built schedule and a schedule monitoring tool to assess current progress and project Valard’s probable completion dates. I have also been working with BRG on Valard’s potential claim issues.

The development of the as-built schedule was started some time ago at Jason Kean’s directions. The development of a monitoring tool was an outgrowth of that effort. The purpose was to provide the project team with a reliable way to assess current progress and forecast completion. The concern was that we could not rely on Valard’s status reports. This has been validated recently with Valard’s manipulation of the current schedule update. This update holds the planned end date in October 2017 despite delays due to their lack of production. Valard has retained the end dates by reducing the durations of work yet to be performed.

The As-Built schedule data collection is well advanced and the preliminary presentation BRG has provided highlights the areas of delay and causation. There is still a ways to go, but we have enough information in hand to dispel some myths about delay and responsibility for the delay. An accurate attribution is not yet available.

The schedule forecasting tool BRG has developed is in the hands of Project Controls and can be updated weekly. The tool is based on Valard’s actual performance data from the field as measured and presented by Valard. The tool describes Valard’s historical production to date,

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and the average over the last few reporting periods. Based on the actual production data we can tell what Valard is achieving juxtaposed to the production rates they have to achieve to meet the schedule completion dates for each work unit and overall, and for each segment. The tool also provides a forecast of Valard's probable completion dates. The tool will also assist Pete in his discussions with Valard to point out the work activities were they need to improve. Pete has been fully briefed on the schedule tool, and the information it is providing.

At the present time with current production rates, the impending spring break up period, and the remaining work to do in the Long Range Mountains, it is likely that Valard will not complete until first quarter of 2018.

The second task has been to look at the Valard's cost claims. The current projection from Valard is that they total about \$300 million. So far these claims are little more than numbers on a spreadsheet, with a limited description, no backup, and a great deal of Valard verbal motivation and augury.

We are gathering background data and preparing an issue database to deal with the claims when and if they are submitted. I have discussed our approach to Pete and explained it is not productive to start assessing a claim when we don't know what it is, and especially don't have any supporting backup from Valard. Gathering of our data in a useful format is certainly of value. We know that one items deals with backfill and we are pulling all that data together and we have a pretty good idea of the total volume, the towers affected, location, etc.

Valard's largest single claim item is delay. Our initial assessment is that Company is not liable for very much, if any of Valard's delays. Much has been said about access, and we can demonstrate pretty clearly Valard's claim is more myth than fact. Valard's own reports show they had access in plenty of time. Up to September of 2015 Valard was responsible for access, so they have little basis for a claim in this period. The only time period which could be valid would be from September 2015 through November 2016. Valard currently has unrestricted access across Newfoundland. The access roads are better than was our contractual obligation and yet we have not seen an improvement in Valard's production. From the end of 2016 through completion of the work Valard has little grounds on which to claim a lack of access.

I have heard that some believe that Valard has an entitlement of up to \$200 million. I have not provided any numbers re Valard's potential claims. Absent anything of substance from Valard any assessment is strictly anecdotal. I have not seen enough from Valard to support any reasonably accurate valuation. Most contractors overstate their initial claim amounts hoping to settle around the 40-50% mark. Our actual claim settlement average to date on about \$80 million in claims is 25%. So a \$300 million claim may have a value of up to \$75 million but I would not even propose that value. My larger concern is how the money being requested in the AFE is being presented. If we allude to settlement of Valard claims I fear we may be admitting liability which we do not want to do. Likewise this is a public document and if Valard

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finds out what that we consider their claims are worth \$200 million we will have a much harder time convincing them of the truth and accepting a lower value.

One of the larger problems that Valard has in regards to its claims is a lack of notice. I do not intend to rest our case on notice but it is an issue Valard has to address.

I have suggested to Pete a couple of options for dealing with the Valard claims. The first is to wait and let Valard submit their written claims and then we analyze and send them our report. This is the more traditional approach and usually the longer and more costly. The second is to lay out a collaborative plan to Valard. The outline is as follows:

Valard sends its team of consultants and key employees to St. John's to meet with Company and its consultants and key employees. (I know the firm Valard has retained, C2G International, and worked with their Chairman.). Our first task is to set up the rules for analysis and prioritize the claim elements. Working together we will address the issue of notice, entitlement, causation, effect and then the damages methodology and causal links. There could be one of three outcomes:

1. The two teams agree and forward a recommendation on each claim element to the Valard/Company management team. They approve and a change order is issued for each element settled.
2. The parties may not be able to agree, but each will have a clear basis for its position. The claim element and the differing positions will be submitted to the management team who can negotiate an agreement, or set aside for a mediation or arbitration.
3. The third outcome is agreement on entitlement, some but not all of the causes and/or effects and thus a difference in the damages. Those two outcomes will be transmitted to management who can agree on a settlement within the ranges proposed.

The collaborative approach has a number of benefits: it will get to closure more quickly than the more traditional approach; and, it shows the Company's willingness to work these issues with Valard.

Some have expressed an urgency to resolve these issues with Valard. I do not believe we need to rush to settlement. I do believe we should move forward in a planned and orderly manner with the facts and resolve these issues based on the facts. If we have a liability to Valard then we will pay them what we owe them, and be able to justify any settlement amount. To date Valard has not demonstrated an ability to resolve a number of commercial issues for which they always point to Company, and now understand the problem is and has been their own; nor has Valard met the performance criteria required to compete the work on time.

Is company responsible for some of these performance issues, maybe, but has yet to be proven. Clearly Valard bears the lion's share and most importantly, the responsibility of proving

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entitlement. Going forward from Valard's October re-baseline, any delays will clearly be to Valard's account; or, we will all have to admit to owning a share.

I will issue an invitation for next week to have a call to discuss the path forward with Valard, and how we may want to involve them in the resolution process.

As I see my role it was to try and develop the management skills to avoid conflict from escalating into disputes. But where disputes arose to manage the dispute resolution process to seek mutual resolution, or if litigation was the only outcome to insure the Company has the best defense possible.